



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
DIVISION OF ENVIRONMENT
BUREAU OF WATER

Kansas Public Water Supply Loan Fund
Policy Memorandum
February 2004

FROM: Karl Mueldener, P.E.
Director, Bureau of Water

SUBJECT: Kansas Public Water Supply Loan Fund -
Post Equivalency Procurement Procedures

PURPOSE: To present Department Policy and help clarify the Federal, State, and Local requirements relating to procurement of goods and services in the Kansas Public Water Supply Loan Fund Program.

BACKGROUND: The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104-182) authorize a Drinking Water State Revolving Fund (DWSRF) to assist public water system to finance the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements and to protect public health objectives of the Act. This Act and the EPA "Final Initial Guidance" dated February 1997 imposed several EPA program requirements related to procurement and construction activities on the SRF projects. The "Across-cutting" Federal Legislation applicable to any Federally funded program impose several requirements as well. The Kansas Public Water Supply Loan Fund (KPWSF) legislation passed in 1994 (K.S.A. 1996 Supp. 65-163d through 65-163u), implementing Administrative Regulations K.A.R. 28-15-50 through 28-15-65, and other existing State Laws and regulations related to procurement and construction activities also impose several requirements on the SRF. Specifically, K.A.R. 28-15-60 (attached as Appendix A) requires projects follow applicable State procurement laws and regulations, and gives the Secretary of KDHE the authority to establish procurement procedures. These requirements may change from time to time as Federal and State Legislation is enacted, and this Policy Memorandum will be revised accordingly.

POLICY AND REQUIREMENTS: It shall be the policy of KDHE to impose procurement procedures and requirements on SRF projects as presented in this document. The policy memo is arranged by subject to ease updating.

Subject

- I. Engineering/Architectural Services
- II. Force Account
- III. Construction Projects
- IV. Small Purchases
- V. Recipient Appeals

Attachments

Appendix A	K.A.R. 28-15-50 through K.A.R. 28-15-65
Appendix B-1	KCE Procedure
Appendix B-2	K.S.A. 75-5801 through 5807
Appendix C-1	40 CFR Part 32 Certification Form
Appendix C-2	40 CFR Part 32 Regulations
Appendix E-1	KPWSLF DBE Information Sheet
Appendix E-2	40 CFR Part 31.36(e)
Appendix E-3	MBE/WBE Region VII Procedure for Implementation
Appendix E-4	MBE/WBE Utilization Worksheet
Appendix E-5	Applicant Assurance form for MBE/WBE (DBE) Utilization
Appendix E-6	MBE/Worksheet Standard Form 5700-52A (5/96) and Instructions
Appendix F-6	Post Equivalency SRF Project Construction Contract Assurances
Appendix F-7	Specification Review Checklist – Post Equivalency Construction
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Appendix G-1	Kansas Act Against Discrimination Contract Provisions
Appendix G-2	Act Against Discrimination Contractor and Applicant Assurance Form
Appendix H-2	Certificate as to Title to Project Site
Appendix H-3	Applicant Assurance with Respect to Acquisition of Real Property
Appendix H-4	KDHE Bid Document Review and Approval Checklist POST EQUIVALENCY
Appendix H-5	Notice of Intent For Stormwater Runoff From Construction Activity

I. Engineering/Architectural Services -

- A. There are no KDHE procurement regulations or required procedures for selecting engineering/architectural services. The loan recipient should use locally established procedures. KDHE suggests the procedures as recommended by the Kansas Consulting Engineers or similar to K.S.A. 75-5801 thru 5807 (attached as Appendices B-1 and B-2) be considered.
- B. KDHE will review engineering contracts for scope only. The loan recipient must clearly indicate the services to be provided by the engineer, as several of the following items are often completed utilizing in-house staff of the loan recipient. Submittal of a contract in draft form is suggested. The scope of a construction phase engineering services contract must, in general, include project management services, inspection of construction, Final Plan of Operation, User Charge Ordinance development (if applicable), O & M Manual development, and Project Performance services (project performance services must be provided by the design or construction engineer, and can not be provided directly by the loan recipient).
- C. The past costs of planning and design can be included in the loan amount based on contracts and billings for the SRF project if the loan recipient so desires, and again there are no required selection procedures.

- D. An engineering contract for services as presented in I.B. above (construction phase services) must be submitted with the SRF Application and must include the following items 1 and 4. The loan recipient submits items 2 and 3 separately.
1. MBE Worksheets in accordance with Region VII Implementation Procedures of 40 CFR Part 31.36(e) and Section 31.36(e) of the March 11, 1988 EPA Procurement Regulations (attached as Appendices E-1 (3 pages), E-2 (1 page), E-3 (2 pages) and E-4 (1 page).)
 2. Applicant's assurance that proposed contractor(s) positive efforts and/or MBE/WBE (DBE) utilization have been reviewed, are satisfactory and meet regulatory requirements (attached as Appendix E-5).
 3. The EPA Form 5700-52A (5/96) is the MBE/WBE Utilization quarterly reporting form (attached as Appendix E-6), and is included for informational purposes. This form must be submitted by the Municipality during the construction of the project to report any qualifying contracts or subcontracts for engineering services for the project.
 4. Contract Provisions of Kansas Statute Annotated (K.S.A.) 44-1030 Kansas Act Against Discrimination and State of Kansas Act Against Discrimination Contract Provisions (attached as Appendices G-1 and G-2. Appendix G-1 and G-2 must be attached to the contract. Appendix G-2 must be executed by the appropriate party and submitted to KDHE).
- E. An engineering contract for services as presented in I. C. above (planning and/or design services) may be submitted with the SRF Application if the loan recipient desires to include the cost of these contracts in the loan. The MBE/WBE (DBE) program and SBRA program requirements do not apply, and the 40 CFR Part 32 Certification Form and the Appendix G-2 should have been submitted with the construction phase services contract, therefore only the Contract Provisions of K.S.A. 44-1030 must be included (attached as Appendix G-1).

II. Force Account -

- A. Construction by force account is discouraged. If the effort is small and easy for the Loan Recipient to do on its own, the Recipient should simply pay for it and save the red tape, additional approvals, and records keeping efforts.
- B. Inspection by force account is also discouraged. KDHE recommends the use of the Engineer for inspection. If a Loan Recipient desires to utilize "in-house" staff through force account, the Recipient must submit a written request to KDHE. The request for KDHE approval

must include an estimate of the cost of force account inspection and the qualifications of the inspector.

III. Construction Projects -

- A. Procurement actions are subject to State Law, Local Ordinances and Restrictions.
- B. KDHE policy is to recommend that formal bid opening with formal published advertising always be utilized. This is required if estimated cost is over \$200,000.
- C. Approval by KDHE is required of technical specifications and Federal bidding requirements through review of plans and specifications prior to advertising for bids. (Federal bidding requirements and construction general condition recommendations are presented as Appendix F-6).
- D. An Engineer's Estimate of contract cost is required, and must be submitted for all projects and/or contracts prior to advertising for bids. (Reference K.S.A. 13-1017, Class I Cities; References K.S.A. 14-440, Class II Cities; and Reference K.A.R. 28-15-61 Attached as Appendix A.).
- E. KDHE will review the design and engineering costs of a specific project for allowability within the KPWSLF program, and include a description of the allowable portions of the project within the Loan Agreement. Presently, as required by Federal Law the Program does not allow the cost of land or easement obtained through eminent domain for construction of facilities.
- F. KDHE review and approval of bids is required prior to award. (Reference K.A.R. 28-15-61, attached as Appendix A).
- G. KDHE will impose the policy requiring award of the lowest responsive, responsible bidder. - Reference K.A.R. 28-15-61 (Appendix A).
- H. KDHE policy will be to continue to request a definite completion time for the project, and the imposition of liquidated damages for delays in completion.

IV. Small Purchase (Supplies, Equipment) -

- A. Procurement actions are subject to State Law, Local Ordinances and Restrictions.
- B. Prior approval by KDHE is required of the technical specification. An Engineer's Estimate is required to be submitted. (Reference 28-15-61, attached as Appendix A).

- C. 1. If estimate is over \$200,000 - use formal bidding procedure discussed in III. B. and C.
- 2. If estimate is under \$200,000 - solicit and submit three written quotes.
- 3. KDHE approval is required prior to purchase or award in both cases. (Reference K.A.R. 28-15-61, attached as Appendix A).

V. Recipient Appeals of KDHE Determinations -

- A. KDHE policy is to have the loan recipient resolve any and all disagreements with their design and construction agents.
- B. A formal process is developed, as follows, to allow the Loan Recipient to appeal a KDHE determination regarding financing the project or allowability of a project cost which the recipient believes has an adverse affect.
 - 1. KDHE policy is to resolve disagreements at the lowest staff levels in as administratively simple procedures as possible generally within the Water Supply Section.
 - 2. The recipient must first approach Public Water Supply Section staff to informally discuss any disagreements with a KDHE determination. Following this, the recipient may then further appeal the issue to the Director of the Bureau of Water. This appeal should be in written form, clearly stating the issue in dispute. A formal written decision will be provided by the Bureau Director.
 - 3. The decision of the Bureau Director can be further appealed to the Director of the Division of Environment. The Director's decision may be in the form of an administrative order. Appeal of an administrative order can be made in conformance with the Kansas Administrative Procedure Act (K.S.A. 1985 Supp. 77-501 through 77-541). Copies of the Administrative Procedure Act are available upon request.

Permanent Administrative Regulations

Article 15.--APPLICATION FOR PERMITS; DOMESTIC WATER SUPPLY

28-15-50 Definitions. For the purposes of these regulations, the following words and phrases are defined as follows:

(a) Capacity" means the technical, managerial, and financial ability to comply with applicable national primary drinking water standards.

(b) Conservation plans and practices" means conservation plans and practices approved by either the Kansas water office or the division of water resources, Kansas department of agriculture, as consistent with guidelines developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608 and amendments.

(c) Debt service coverage ratio" means the sum of net income plus interest expense plus depreciation, divided by the sum of principal and interest payments for debt service.

(d) Department" means the Kansas department of health and environment.

(e) Disadvantaged community" means a loan applicant or the service area of a loan applicant that meets affordability criteria established by the secretary.

(f) Equivalency" means that portion of the Kansas water supply loan fund that is equal to the amount of capitalization grants provided by the federal government.

(g) Equivalency project" means a project that is funded from the equivalency portion of the Kansas water supply loan fund.

(h) Fund" means the Kansas water supply fund established by K.S.A. 1996 Supp. 65-163e et seq., and amendments, and may consist of more than one pool of money.

(i) Intended use plan" means the plan prepared according to K.S.A. 1996 Supp. 65-163h and amendments.

(j) Loan agreement" means an executed contract between a loan applicant and the secretary confirming the purpose of the loan, the amount and terms of the

loan, the schedule of the loan payments and requirements, and any other agreed upon conditions set forth by the secretary.

(k) Loan applicant" means one of the following:

(1) any political or taxing subdivision authorized by law to construct, operate, and maintain a public water supply system, including water districts;

(2) two or more such subdivisions jointly constructing, operating, or maintaining a public water supply system; or

(3) the Kansas rural water finance authority.

(l) National primary drinking water standards" means a regulation that specifies either a maximum contaminant level or a treatment technique along with associated monitoring and reporting requirements for contaminants with adverse health effects on persons.

(m) Project completion" means the initiation of operation or the ability to initiate operation.

(n) Project" means acquisition, construction, reconstruction, improving, equipping, rehabilitation, or extension of all or any part of a public water supply system.

(o) Public water supply system" has the meaning provided by K.S.A. 65-162a and amendments.

(p) Secretary" means the secretary of health and environment.

(q) Significant noncompliance" means failure to comply with any national primary drinking water standard according to criteria established by the administrator of the federal environmental protection agency.

(r) Water transfer" has the meaning provided by K.S.A. 1996 Supp. 82a-1501 and amendments. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-51 Fund use eligibility.

(a) The fund shall be used only to provide loans to loan applicants for all or any part of the following:

(1) The acquisition, construction, reconstruction, improvement, equipping, rehabilitation, or extension of all or any part of a public water supply system;

(2) costs for project planning, design, and construction inspection, if included in the loan application; and

(3) if a construction contract has been awarded on or after August 6, 1996, refinancing the acquisition, construction, improvement, equipping, rehabilitation, or extension of all or any part of a public water supply system, including costs for project planning, design, and construction inspection. Refinancing shall be allowed only from funds provided directly or indirectly, by federal appropriations for federal fiscal year 1997.

(b) Each project eligible to receive loans shall appear on the project priority list prepared by the department. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-52 Interest rate.

(a) Each loan shall bear interest for the entire life of the loan at a fixed rate set by the secretary. This fixed rate shall be calculated as described in subsection (b). Fees for servicing the loans may also be set by the secretary.

(b) The interest rate shall be calculated as a percentage, as set forth in the intended use plan, of three months' average of the bond buyers 20 bond index." The average is determined using rates published on Monday of each week of the immediately preceding three months. The loan interest rate as calculated shall include any loan service fees.

(c) The interest rate and loan servicing fee shall be the same for all loan applicants. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-53 Repayment of loans.

(a) All principal and interest shall be repaid in accordance with the terms and conditions of the executed loan agreement. Repayments shall begin no later than two years after receipt of the first loan disbursement, and in no case later than one year following completion of the project. Repayment of the loan shall not exceed a 20-year repayment period as agreed upon in the loan agreement.

(b) Prepayment of the principal in whole or part may be made, in accordance with the terms and conditions of the executed loan agreement. (Authorized by K.S.A.

1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-54 Dedicated loan repayment source.

(a) Each loan recipient shall adopt one or more dedicated sources for repayment of the loan, including principal and interest. The dedicated sources of revenue may be in the form of revenue from water sales, service charges, connection fees, special assessments, property taxes, grants, or some combination of these sources. Each dedicated source of revenue shall be legally available to the loan recipient over the life of the loan and pledged to the repayment of the loan. Each dedicated source of revenue shall be approved by the secretary.

(1) Each loan recipient with general taxing authority shall commit to using that authority, if necessary, as a condition of receiving a loan. As an alternative to pledging general tax authority, any such loan recipient may purchase bond insurance.

(2) Each loan recipient without general taxing authority shall purchase bond insurance as a condition of receiving a loan. As an alternative to purchasing bond insurance, any such loan recipient shall pledge to maintain either of the following:

(A) A debt service coverage ratio of 140%; or

(B) a debt service coverage ratio of 125% combined with a 10% loan reserve account.

(b) Each loan recipient shall conduct an annual revenue source review during the entire life of the loan repayment obligation and, if necessary, shall implement new revenue rates as approved by the secretary. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-55 Failure to repay loan on schedule.

(a) Upon failure of a loan recipient to pay one or more installments of the loan repayment on schedule, the governing body of the loan recipient shall be consulted by the secretary and may be required to undergo a financial and management operations review.

(b) The governing body shall correct any deficiencies noted during the review and adopt charges as set by the secretary, to be levied against users of the

project. These charges shall remain in effect until the full amount of the loan, including principal and interest, has been repaid, unless otherwise approved by the secretary. The governing body of each loan recipient shall collect any such charges and shall forward all receipts from such charges on a schedule established by the secretary. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-56 Project eligibility.

(a) No assistance from the fund shall be provided for any water transfer project, or for any portion of a project involving a water transfer. No assistance from the fund shall be provided to any loan applicant who has not adopted and implemented water conservation plans and practices.

(b) No assistance shall be provided to any loan applicant in significant noncompliance with any applicable primary drinking water regulation, unless the project will return the loan applicant to compliance.

(c) No assistance shall be provided to any loan applicant lacking capacity, unless the loan applicant agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative sources of supply, or other procedures if the secretary determines that such changes are required to demonstrate capacity.

(d) No assistance shall be provided for projects and activities deemed ineligible for participation by the U.S. environmental protection agency. Any such projects and activities shall be listed in the intended use plan. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-57 Equivalency projects. Equivalency projects shall be required to comply with federal laws and executive orders that apply to all activities receiving federal assistance. In any given year, more projects than are necessary to equal the equivalency portion of the fund may be required to comply with equivalency project requirements, for the purpose of building an equivalency credit for future federal funds. (Authorized

by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-58 User charge system. Each loan applicant shall develop and, after the secretary's review and approval, adopt a rate system that shall produce adequate revenue for repayment of the loan principal and interest, and for operation and maintenance of the entire public water supply system, including depreciation. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-59 Project certification. Each loan recipient shall certify to the secretary whether or not the project meets its design requirements on the date one year after the initiation of operation of the project. The loan recipient shall be responsible for assuring timely correction and compliance, including recertification if the initial certification concluded that the project did not meet its design requirements. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-60 Procurement. Each loan recipient shall follow state procurement laws and regulations applicable to the recipient and procedures established by the secretary. The secretary's approval is required before awarding any contract for construction. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-61 Project documents.

(a) Each loan applicant shall submit the following documents for the secretary's review and approval:

- (1) A completed loan application on application forms furnished by the department;
- (2) an engineering report describing the need for the project, project design parameters, and an estimate of cost; and
- (3) financial statements for the previous three years.

(b) Each loan recipient shall submit the following documents for the secretary's review and approval:

(1) Complete design plans, specifications, and construction bidding documents, including detailed cost estimates for competitive bidding, and projected construction and payment schedules;

(2) a plan for providing construction inspection services;

(3) a plan of operation, including an overall project completion schedule, annual operating cost projections for a minimum of five years, a description of the financial management system, and projected revenues to operate and maintain the public water supply system. Revenue projections shall also include the loan repayment obligations; and

(4) an operations manual, which shall be submitted before 90% of the project is completed. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-62 Financial capability. As part of the loan application, the loan applicant shall demonstrate and certify to the secretary that the applicant has the financial capability to repay the loan and to cover the costs of operation and maintenance of the entire public water supply system of which the proposed project is an integral part. This financial assessment shall cover the life of the loan obligation and consider, at a minimum, changes in economic and population growth, depreciation, existing debt obligations, revenues, project costs, and effects on user charge rates. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-63 Public participation.

(a) Each loan applicant shall conduct a minimum of one public hearing before execution of the loan agreement, to discuss the proposed project and receive input on alternatives. Notice of the public hearing shall be provided to the department and shall be published in one or more newspapers, as needed to cover the project service area, at least 30 calendar days before the public

hearing.

(b) A record of the public hearing and proof of publication shall be submitted prior to execution of the loan agreement.

(c) The 30-day public notice requirement may be waived by the secretary for any project deemed an emergency. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-64 Environmental review.

(a) The Environmental review procedure for Kansas public water supply loan fund," dated July 1997, is adopted by reference as the required environmental review procedure for an equivalency project.

(b) For an equivalency project, 40 CFR 6.508(a), 6.511(b), and 6.512, as in effect on July 1, 1996, are hereby adopted by reference.

(c) Those members of the public who participated in the environmental review process shall have the right to appeal the decisions made within that process. All such appeals shall be conducted pursuant to the Kansas administrative procedure act and the act for judicial review set forth in K.S.A. 77-501 et seq. and 77-601 et seq., respectively.

(d) When used in any provision adopted from 40 CFR Part 6, references to EPA" shall be replaced with the Kansas department of health and environment"; grant" shall be replaced with loan agreement"; grantee" shall be replaced with applicant." (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 65-163e through 65-163u; effective Oct. 10, 1997.)

28-15-65 Project accounts. Each loan recipient shall maintain project accounts in accordance with generally accepted government accounting standards as defined in the 1994 edition of the governmental accounting, auditing, and financial reporting" manual issued by the government finance officers association. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**LOCAL GOVERNMENT
PROCUREMENT PROCEDURE
FOR
PROFESSIONAL ENGINEERING SERVICES**

From "Kansas Consulting Engineers"

When a local government desires the services of a professional engineer, the procedure used to contract for such services has a great deal to do with how satisfied the government entity will be with the engineer and ultimately with the resulting public works project. Quite frequently the best procedure is simply to negotiate with the firm which has established a prior good relationship with the governing body, particularly if the design professional is qualified for the project under consideration.

There are, however, occasions when the local government will wish to consider several engineering firms; therefore, under these circumstances the procedure below is recommended.

This procurement procedure consists of four major elements: notice, submittals, review of submittals, and negotiations. Each element is discussed in some detail in the following paragraphs:

1. **Notice:** The notice to consultants can be formal or informal depending upon the size and complexity of the project under consideration. It can be done by letter to consultants with whom the local government is familiar, or by publication in newspapers and/or trade journals. The notice should be concise and as brief as possible containing the following information.
 - a. Name of the local government requiring services and the name of a contact person.
 - b. A description and location of the project.
 - c. The deadline for receipt of submittals from interested design professionals.
2. **Submittals:** All interested professional architect/engineers responding to the notice should provide the requested information in a convenient manner. This response should contain all the necessary information and shall also include the following information:
 - a. A statement of the technical approach to be utilized in performing the project.
 - b. A statement of his proposed schedule for accomplishment.

- c. Facilities, equipment and personnel available for the project.
 - d. Any other supporting material as may be applicable.
3. **Review of Submittals:** The governmental body should establish a review panel to receive and review submittals for the proposed work. The review panel should meet promptly after the deadline date and should review and evaluate all submittals received.

A “short list” comprised of three submittals (if available) should be established and ranked in order of preference. The panel is encouraged to check references of the firms by phone or letter.

The review panel may desire to further examine the experience and qualifications of the “short listed” firms through personal interviews. In such cases, the firms identified by the ranked submittals should be contacted and invited to schedule interviews. Adequate, but specified time should be allowed for this interview.

After the interviews, or when the selection is determined, the top-ranked firms should be invited to negotiate terms and conditions of the contract for professional services.

4. **Negotiations:** The governmental body should undertake to negotiate with the top-ranked firm as soon as possible after the selection has been made.

In the event the governmental body is unable to negotiate a suitable contract with the first-ranked firm, negotiations should be terminated with that firm, and the governmental body should then initiate negotiations with the second-ranked firm. This process should be continued until suitable contractual arrangements with the firm have been satisfactorily consummated. All unsuccessful firms should be so advised by letter.

This procedure has been carefully prepared for the mutual protection of the client and the consultant. It has stood the test of time and is widely accepted as the best for the client and the design professional.

Article 58 - State Engineering and Land Surveying Services

75-5801. State policy. The legislature hereby declares it to be the policy of this state to publicly announce all requirements for engineering services, and to negotiate contracts for engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable fees.

History: L. 1977, ch. 287, " 1; April 21.

75-5802. Definitions. As used in this act unless the context specifically requires otherwise:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of engineering and provide engineering services or practice the profession of land surveying and provide land surveying services.

(b) "Engineering services" means those services described in subsection (i) of K.S.A. 74-7003 and amendments thereto.

(c) "Land surveying" means those services described in subsection (j) of K.S.A. 74-7003, and amendments thereto.

(d) "Agency head" means the chief administrative officer of a state agency, as that term is defined in subsection (3) of K.S.A. 75-3701 and amendments thereto, but shall not include the chief administrative officer of any state institution.

(e) "Negotiating committee" means a committee designated to negotiate as provided in this act, and consisting of (1) the agency head of the state agency for which the proposed project is planned, or a person designated by such agency head, (2) the secretary of administration, or a person designated by said secretary, and (3) the chief administrative officer of the state institution for which the proposed project is planned, or when the proposed project is not planned for a state institution, the agency head shall designate a second person in lieu of the chief administrative officer of a state institution.

(f) "Project" means any capital improvement project or any study, plan, survey or program activity of a state agency, including development of new or existing programs and preparation of federal grant applications.

(g) "State building advisory commission" means the state building advisory commission created by K.S.A. 75-3780 and amendments thereto, or any duly authorized officer or employee of such commission.

History: L. 1977, ch. 287, " 2; L. 1978, ch. 337, " 30; L. 1992, ch. 240, " 30; L. 1996, ch. 48, " 1; Mar. 28.

75-5803. Qualification statements of engineering and land surveying firms; annual list of qualified firms; selection of firms from list prepared by state building advisory commission in certain cases; procedure. (a) In the procurement of engineering or land surveying services, each agency head which utilizes engineering or land surveying services shall encourage firms engaged in the lawful practice of their profession to annually submit a statement of qualifications and performance data to the agency head and to the state building advisory commission. The agency head shall thereafter cause to be prepared annually a list of firms qualified, based upon criteria established and published by such agency head, to provide such engineering or land surveying services.

(b) Except as otherwise provided in subsection (c), when a project requiring engineering or land surveying services is proposed for a state agency, the agency head for such state agency shall evaluate current statements of qualifications and performance data on file with the agency head, together with those that may be submitted by other firms regarding the proposed project. The agency head may establish time frames for the receipt of qualifications statements and performance data from any firm wishing to be considered for the proposed project. The agency head shall conduct discussions with not less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required engineering or land surveying services and then such agency head shall select from among all such firms, on a rotational basis, the firm to perform the engineering or land surveying services, unless such firm refuses to provide such engineering or land surveying services.

(c) In any case where a project requiring engineering or land surveying services is proposed which concerns the construction of any building or facility or any major repairs or improvements to any building or facility, including in any case but not limited to any heating, cooling or power facility, for a state agency and a negotiating committee is not convened under K.S.A. 75-5804 and amendments thereto, the agency head of the state agency shall notify the state building advisory commission and shall request a list of firms qualified to provide the engineering or land surveying services for such project. Upon receipt of any such request, the state building advisory commission shall evaluate the current statements of qualifications and performance data on file, together with those statements that may be submitted by other firms, regarding the proposed project and other information developed and available to the state building advisory commission, and shall prepare a list of at least three and not more than five firms which, in the opinion of the state building advisory commission, are qualified to furnish the engineering or land surveying services for the proposed project. Each such list shall be submitted to the agency head without any recommendation of preference or other recommendation. The agency head shall conduct discussions with the firms listed and shall select the firm to perform the engineering or land surveying services, all in the manner provided in subsection (b). If the agency head is unable to enter into a contract for the necessary engineering or land

surveying services with any firm so listed, the agency head shall request the state building advisory commission to prepare and submit another list of firms qualified to provide such engineering or land surveying services and shall proceed in accordance with this subsection. The secretary of administration shall provide to the agency head such information, advice and assistance as may be requested by the agency head regarding the selection of a firm to provide engineering or land surveying services for such projects, including all information and evaluations regarding the listed firms gathered and developed under K.S.A. 75-3783, and amendments thereto.

History: L. 1977, ch. 287, " 3; L. 1978, ch. 337, " 31; L. 1984, ch. 336, " 1; L. 1996, ch. 48, " 2; Mar. 28.

75-5804. Negotiating committee convened; list of qualified firms for projects; list prepared by state building advisory commission in certain cases; procedure. (a) Whenever it becomes necessary in the judgment of the agency head of a state agency for which a project is proposed and, in any case where the total cost of such a proposed project is expected to exceed \$250,000, the agency head shall convene a negotiating committee. Except as otherwise provided in subsection (b), the agency head shall submit the list of at least three and not more than five of the most highly qualified firms to the negotiating committee so convened, without any recommendation of preference or other recommendation.

(b) Whenever a negotiating committee is convened under this section for a proposed project requiring engineering or land surveying services which concerns the construction of any building or facility or any major repairs or improvements to any building or facility, including but not limited, to any heating, cooling or power facility, for a state agency, the agency head for the state agency shall notify the state building advisory commission of the project and shall request a list of firms qualified to provide the engineering or land surveying services for the proposed project. Upon receipt of any such request the state building advisory commission shall evaluate the current statements of qualifications and performance data on file, together with those statements that may be submitted by other firms regarding the proposed project and other information developed and available to the state building advisory commission. The commission shall prepare a list of at least three and not more than five firms which, in the opinion of the state building advisory commission, are qualified to furnish the engineering or land surveying services for the proposed project. Each such list shall be submitted to the negotiating committee so convened without any recommendation of preference or other recommendation.

History: L. 1977, ch. 287, " 4; L. 1978, ch. 337, " 32; L. 1979, ch. 280, " 19; L. 1996, ch. 48, " 3; L. 1996, ch. 238, " 1; July 1.

75-5805. Written project description; no alteration without approval. The negotiating committee shall cause a written description of the scope or program of the proposed project to be prepared. Such description shall be used in the negotiations between the negotiating committee and qualified firms. The proposed project description shall be the basis for the project development and such description shall not be altered without the prior approval of the negotiating committee.

History: L. 1977, ch. 287, " 5; April 21.

75-5806. Negotiating committee access to data on firms; selection of firms. The negotiating committee for each proposed project shall have access to the current statements of qualifications and performance data on file with the agency head for the firms listed by the agency head. In the case of firms listed by the state building advisory commission, the negotiating committee shall have access to the current statements of qualifications and performance data on file with the state building advisory commission and to all information and evaluations regarding the listed firms gathered and developed under K.S.A. 75-3783, and amendments thereto. The negotiating committee shall conduct discussions with each of the firms so listed regarding the proposed project and then shall select a single firm from such listing to provide engineering or land surveying services in accordance with this act.

History: L. 1977, ch. 287, " 6; L. 1978, ch. 337, " 33; L. 1996, ch. 48, " 4; Mar. 28.

75-5807. Negotiation of contract with selected firm; duties of committee; failure of negotiations with selected firms; additional list of nominees. (a) Each negotiating committee shall determine which engineering or land surveying services are necessary and shall negotiate a contract for each proposed project with the selected firm for the necessary engineering or land surveying services. In such negotiations, the negotiating committee shall always consider demonstrated competence and qualifications and shall take into account the estimated value of the engineering or land surveying services to be rendered and the scope, complexity and professional nature thereof.

(b) If the negotiating committee is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be terminated. The negotiating committee shall then undertake negotiations with the second most qualified firm. If there is a failing of accord with the second most qualified firm, negotiations with such firm shall be terminated. The negotiating committee shall then undertake negotiations with the third, fourth and fifth most qualified firms in turn.

(c) If the negotiating committee is unable to negotiate a satisfactory contract with any of the selected firms, the negotiating committee shall reevaluate the necessary engineering or land surveying services and fee requirements and reopen negotiations with any of the firms on the list submitted by the agency head. If the negotiating committee is still unable to enter into a contract for the necessary engineering or land surveying services, the negotiating committee shall request the agency head or, in the case of a proposed project under subsection (b) of K.S.A. 75-5804, and amendments thereto, the state building advisory commission to provide another list of firms to be negotiated with by the negotiating committee and, upon receipt of such list, the negotiating committee shall proceed in accordance with the provisions of this act.

History: L. 1977, ch. 287, " 7; L. 1978, ch. 337, " 34; L. 1996, ch. 48, " 5; Mar. 28.



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
DIVISION OF ENVIRONMENT
BUREAU OF WATER

KANSAS PUBLIC WATER SUPPLY LOAN FUND
 DISADVANTAGED BUSINESS ENTERPRISE
 INFORMATION SHEET

July 2, 1998

The administrative provisions of the Federal Fiscal Year 1991 Appropriations Act require the State Revolving Fund programs make a minimum 8% 'Fair Share' of Federal Funds available to "Disadvantaged Business Enterprise" (DBE) firms. By acceptance of the Federal Fiscal Year 1991 and all subsequent Capitalization Grants, the Kansas Department of Health and Environment (KDHE) must comply with Special Conditions of these awards regarding "Disadvantaged Business Enterprise" Utilization. KDHE agrees to insure to the fullest extent possible that federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organization owned or controlled by socially or economically disadvantaged individuals, women, and historically black colleges and universities. This DBE Utilization requirement will apply to all future capitalization grants, therefore these DBE Utilization requirements will now apply to all Kansas Public Water Supply Loan Fund (KPWSLF) projects. This information sheet explains requirements of the KPWSLF for DEB utilization. A copy of this Information Sheet must be included within engineering contracts for construction services and within the contract documents of construction specifications.

A Disadvantaged Business Enterprise is defined as a business concern owned or controlled by socially disadvantaged and economically disadvantaged individuals. The socially disadvantaged individual must have a minimum of 51 percent ownership, control, and active daily measurement of the business concern to meet this criterion.

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities, and are further defined as:

Black Americans	Asian Pacific Americans
Hispanic Americans	Native Hawaiian Organizations
Native Americans	Women
Indian Tribes	Historically Black Colleges and Universities

Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital or credit opportunities, as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the U.S. Small Business Administration (SBA) shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individuals.

The DBE program is a self-certification program, and so an SBA “determination” is not required, but can be obtained. Any questions regarding the economically disadvantaged aspect of this DBE program can be directed to:

U.S. Small Business Administration
Minority Enterprise Development Division
Wichita District Office Kansas City District Office
316/269-6566 816/374-6815

Several lists of MBE/WBE firms and/or DBE firms are available:

The Kansas Department of Transportation Directory of Disadvantaged Business Enterprise (DBE) and the Kansas Department of Commerce & Housing Minority & Women Owned Business Directory are available by contacting the Bureau of Water Administrative Unit, at 785/296-5534. These listings may also be obtained at the following web sites : **www.ink.org/public/kdot/business/dbe.htm** and **http://kdoch.state.ks.us:80/KDOCHdocs/BD/Minority_and_Women_Owned_Business_Directory.pdf**.

A current listing of small or small disadvantaged business concerns within the four state regional area (Kansas, Missouri, Iowa and Nebraska) is available by contacting either Mr. Marlin Francksen, Supervisor, Government Contracting, Mr. David Turner, Commercial Market Representative or Ms. Christine Sadri, Government Contracting Assistant with the Small Business Administration Office at 816/374-6815. The Small Business Administration Office for the four state area is located at 323 West 8th, Suite 501, Kansas City, Missouri 64105. As previously indicated, an existing company may self-certify as a Disadvantaged Business Enterprise with the SBA. The Small Business Administration encourages the individual municipality, consulting engineer, and/or construction contractor to contact them directly to discuss the individual project and the opportunity for small and small Disadvantaged Business Enterprise firms utilization. The SBA manages the Pronet System (www.SBA.Gov) which provides information by geographical area, trade, profession, and type of ownership. This listing includes only “small” business, as defined by SBA.

Listings of DBE firms are also available from the Minority Business Development Agencies (MBDA) and Centers of the U.S. Department of Commerce. The MBDA manages the PROFILE computer data file, designed to match minority firms with construction, manufacturing, service, and research contract opportunities. Information is available by contacting Mr. David Vega, MBDA Regional Director, 55 E. Monroe Street, Suite 1406, Chicago, Illinois 80603, at 312/353-0182.

Historically Black Colleges and Universities (HBCU) are identified by the Department of Education listing of minority colleges and universities. A copy of this listing is available also by contacting the Bureau of Water Administration Unit, at 785/296-5534.

This information is intended as a resource reference only and not intended to restrict or limit contact with other disadvantaged business.

Engineering firms and construction contractors must report utilization of Disadvantaged Business Enterprises, and must provide documentation of all efforts to obtain and utilize these business concerns on the Minority and Women's Disadvantaged Business Enterprise Utilization Worksheet (Appendix E-4), to the municipality for review and acceptance. The municipality is required to submit a copy of this information to KDHE as well as submit the Applicant Assurance with Respect to Affirmative Steps for MBE/WBE DBE Utilization (Appendix E-5), and the MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Interagency Agreements, EPA Form 5700-52A (Appendix E-6). The information reported utilizing these forms must be expanded to present the Socially Disadvantaged aspect of the business concern, for example Black American, Women-Owned, HCBU, etc., rather than only MBE or WBE.

The Municipality is required to maintain copies of the Kansas Department of Transportation Directory of Disadvantaged Business Enterprises (DBE), the Kansas Department of Commerce & Housing Minority and Women Owned Business Directory, the Listing of Minority Colleges and Universities, and other sources available at City Hall (and other appropriate locations) for access by consultants, contractors, and suppliers during the bidding and construction phases. Any questions regarding these documents should be directed to the Bureau of Water Administration Unit, at 785/296-5534 .

40 CFR Ch. I

Sec. 31.36 procurement.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing deliver schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(iv) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

Region VII Procurement for Implementation
of 40 CFR Part 31.36(e)
(Minority Business Enterprise/Women's Business Enterprise)*

(The following information must be contained in solicitation documents for construction contracts and engineering agreements pursuant to 40 CFR Part 31.36(e).)

Each bidder/offeree must fully comply with the requirements, terms, conditions of EPA's policy to award a fair share of subagreements to minority and women's businesses. The bidder/offeree commits itself to taking affirmative steps contained herein. Bidders/offerees will take affirmative steps prior to submission of bids/proposals.

Affirmative Steps

1. When feasible, segmenting total work requirements to permit maximum MBE/WBE participation.
2. Assuring that MBEs and WBEs are solicited whenever they are potential sources of goods or services. This step may include:
 - a. Sending letters or making other personal contacts with MBEs and WBEs (e.g. those whose names appear on lists prepared by EPA or the grantee and other MBE/WBEs known to the bidder/offeree). MBEs and WBEs should be contacted when other potential subcontractors are contacted, within reasonable time (fifteen days) prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:
 - i. Specific description of the work to be subcontracted;
 - ii. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
 - iii. Date the quotation is due to the bidder/offeree;
 - iv. Name, address, and phone number of the person in the bidder/offeree's firm whom the prospective MBE/WBE subcontractor should contact for additional information.

*Adopted for use as a Kansas Public Water Supply Loan Fund document.

- b. Sending letters or making other personal contacts with local, State, federal and private agencies and MBE/WBE associations relevant to the project. Such contacts should provide the same information provided in the direct contacts to MBE and WBE firms.
3. Where feasible, establishing delivery schedules which will encourage participation by MBEs and WBEs.

Determination of Compliance

It is to be noted that bidders/offers must demonstrate compliance with MBE/WBE requirements in order to be deemed responsible. Demonstration of compliance shall include, but is not limited to, the following information:

1. Names, addresses and phone numbers of MBE/WBEs expected to perform work;
2. Work to be performed by the MBEs and WBEs;
3. Aggregate dollar amount of work to be performed by MBEs and WBEs, showing aggregate to MBEs and aggregate to WBEs separately;
4. Description of contracts to MBE and WBE organizations, agencies and associations which serve MBE/WBEs, including names of organizations, agencies and associations and dates of contacts;
5. Description of contacts to MBEs and WBEs, including number of contacts, fields, (i.e. equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contacts.

All bidders/offers should complete the Minority and Women's Business Enterprise Utilization Worksheet and submit to the grantee prior to contract award.

(Grantees may establish alternative methods of compliance equivalent to or more stringent than the above.)

KANSAS PUBLIC WATER SUPPLY LOAN FUND
MINORITY AND WOMEN'S DISADVANTAGED BUSINESS ENTERPRISE
UTILIZATION WORKSHEET

Loan Recipient _____
Project No. _____
Contractor/Engineer _____
Address _____
Contact Person: _____ Telephone No. _____
Amount of Contract _____ MBE Percentage _____ WBE Percentage _____

1. MBE _____ Subcontractor/Supplier _____
WBE _____ Address _____
Contact Person _____ Telephone No. _____
Amount of Subcontract _____
Scope of Work _____

2. MBE _____ Subcontractor/Supplier _____
WBE _____ Address _____
Contact Person _____ Telephone No. _____
Amount of Subcontract _____
Scope of Work _____

3. MBE _____ Subcontractor/Supplier _____
WBE _____ Address _____
Contact Person _____ Telephone No. _____
Amount of Subcontract _____
Scope of Work _____

4. MBE _____ Subcontractor/Supplier _____
WBE _____ Address _____
Contact Person _____ Telephone No. _____
Amount of Subcontract _____
Scope of Work _____

5. MBE _____ Subcontractor/Supplier _____
WBE _____ Address _____
Contact Person _____ Telephone No. _____
Amount of Subcontract _____
Scope of Work _____

Comments _____

Prepared by _____ Telephone No. _____

Date _____

(Use additional copies of this sheet if needed)

APPLICANT ASSURANCE WITH RESPECT TO
AFFIRMATIVE STEPS FOR MBE/WBE (DBE) UTILIZATION

I hereby certify that with reference to Water Supply/Treatment/Distribution Project No. _____, I have reviewed the affirmative steps made by the consultant(s)/contractor(s) in relation to MBE/WBE (DBE) utilization and find that the steps satisfy the requirements set out in K.A.R. 28-15-57. Attached is the appropriate documentation to support this assurance.

Authorized Representative of Applicant

Date

Legal Name of Applicant

MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS, AND OTHER FINANCIAL ASSISTANCE

PART I. (NEGATIVE REPORTS ARE REQUIRED)

1A. FEDERAL FISCAL YEAR 20_____		1B. REPORTING QUARTER (Check Appropriate Box) <input type="checkbox"/> 1 st (Oct-Dec) <input type="checkbox"/> 2 nd (Jan-Mar) <input type="checkbox"/> 3 rd (Apr-Jun) <input type="checkbox"/> 4 th (Jul-Sep) <input type="checkbox"/> Annual	
2. STATE FINANCIAL ASSISTANCE AGENCY: (Department, Agency, Bureau, Administering Office, Address)		3. REPORTING RECIPIENT (Name & Address)	
2A. REPORTING CONTACT	Phone	3A. Reporting Contact	Phone:
4A. FINANCIAL ASSISTANCE AGREEMENT I.D. NO.		4B. STATE FINANCIAL ASSISTANCE PROGRAM State Revolving Fund Loan Program	
5A. TOTAL LOAN AMOUNT \$		5B. TOTAL CONTRACT/PROCUREMENT AMOUNT THIS QUARTER \$	
		5C. RECIPIENTS MBE/WBE GOALS MBE _____% WBE _____%	
5D. ACTUAL MBE/WBE PROCUREMENT ACCOMPLISHED THIS REPORTING PERIOD MBE \$ WBE \$			5E. NEGATIVE REPORT (Check) <input type="checkbox"/> See Instructions
6. COMMENTS			
7. NAME OF AUTHORIZED REPRESENTATIVE			TITLE
8. SIGNATURE OF AUTHORIZED REPRESENTATIVE DATE			

MBE/WBE PROCUREMENTS MADE DURING QUARTER

PART II

[illegible]

*Type of product or service codes:

1 ' Agriculture	5 ' Transportation	9 ' Services	10 ' Other
2 ' Mining	6 ' Wholesale Trade	a ' Business Services	
3 ' Construction	7 ' Retail Trade	b ' Professional Services	
4 ' Manufacturing	8 ' finance, Insurance, Real Estate	c ' Repair Services	
	d ' Personal Services		

KDHE
KPWSLF

INSTRUCTIONS

MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS, AND INTERAGENCY AGREEMENTS EPA FORM 5700-52A

A. General Instructions:

MBE/WBE utilization is based on Executive Orders 11625, 12138, 12421, P.L. 102-389 and EPA Regulations Part 30 and 31. EPA Form 5700-52A must be completed by recipients of Federal grants, cooperative agreements, or other Federal financial assistance which involve procurement of supplies, equipment, construction or services to accomplish Federal assistance programs.

Recipients are required to report to EPA within one month following the end of each Federal fiscal year quarter or annually as in the agreement.

B. Definitions:

Procurement is the acquisition through order, purchase, lease or barter of supplies, equipment, construction or services needed to accomplish Federal assistance programs.

A *contract* is a written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for equipment, services, supplies, or construction necessary to complete the project. Includes personal and professional services, agreements with consultants, and purchase orders.

A *minority business enterprise (MBE)* is a business concern that is (1) at least 51 percent owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more of the minority owners.

U.S. citizenship is required. Recipients shall presume that minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or other groups whose member are found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under section 5 of Executive order 11625. The reporting

contact at EPA can provide additional information.

A *woman business enterprise (WBE)* is a business concern that is, (1) at least 51 percent owned by one or more women, or, in the case of a public owned business, at least 51 per cent of the stock is owned by one or more women and (2) whose daily business operations are managed and directed by one or more of the women owners.

Business firms which are 51 percent owned by minorities or women, but are in fact managed and operated by non-minority individuals do not qualify for meeting MBE/WBE procurement goals.

The following affirmative steps for utilizing MBEs and WBEs are required to be documented:

1. Inclusion of MBEs/WBEs on solicitation lists.
2. Assure MBEs/WBEs are solicited once they are identified.
3. Where feasible, divide total requirements into smaller tasks to permit maximum MBE/WBE participation.
4. Where feasible, establish delivery schedules which will encourage MBE/WBE participation.
5. Encourage use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBDA) and the U.S. Small Business Administration to identify MBEs/WBEs.
6. Require that each party to a subgrant, subagreement, or contract award take the affirmative steps outlined here.

C. Instructions for Part I:

1. Complete Federal fiscal year and check applicable

reporting box quarterly or annually. (Federal fiscal year runs from October 1 through September 30.)

D. Instructions for Part II:

For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

2. **“Will be provided by EPA.”**
3. Identify the agency, state authority, university or other organization which is the recipient of the Federal financial assistance and the person to contact concerning this report.
- 4a. Grant/cooperative agreement or Interagency Agreement number assigned by EPA.
- 4b. Refer back to grant document for this information.
- 5a. Total grant amount which includes Federal funds plus recipient matching funds and funds from other sources.
- 5b. Total contracts/procurements awarded this quarter. For example: Actual dollars for procurement from the procuring office; actual contracts let from the contracts office; actual goods, services, supplies, etc., from other sources including the central purchasing/procurement centers.
- 5c. Portion of total procurement dollars recipient plans to spend with MBEs or WBEs this fiscal year. With the concurrence of EPA, a fair share goal should be determined by each recipient.
- 5d. Dollar amount of all MBE/WBE procurement amount awarded under this reporting period. (These amounts include the Federal, State, and local shares in the procurement awards.)
- 5e. Check only if no procurements were made this reporting period. (If dollar amounts are shown in 5b. indicate reason in 6. Comments Section.)
6. Additional comments or explanation. Please refer to specific item number(s) if appropriate.
7. Name and title of official administrator or designated reporting official.
8. Signature and month, day, and year report submitted.

1. Check whether this is a *first tier* procurement made directly by Federal financial assistance recipient or other *second tier* procurement made by recipient's subgrantee or prime contractor. Include all qualifying second tier purchases executed this quarter regardless of when the first tier procurement occurred.
2. Check MBE or WBE.
3. Dollar value of procurement.
4. Date of award, shown as month, day, year.
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (e.g., enter 1 if agriculture, 2 if mining, etc.).
6. Name and address of MBE/WBE firm.

This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30 and 31); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.

The public reporting and recording burden for this collection of information is estimated to average 1 hour per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for the Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M Street, S.W., Washington, D.C. 20460. Indicate the OMB Control number in any correspondence. Do not send the completed form to this address.

SRF PROJECT CONSTRUCTION CONTRACT ASSURANCES
Post Equivalency

A. Advertising Time - KDHE policy recommends the invitation for bids be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening of bids. Projects should be advertised for bids at least 30 days prior to bid opening. To allow ample time for bidders to comply with minority business enterprise requirements, it is suggested a period longer than 30 days be considered.

B. Reserved

C. Reserved

D. Reserved

E. Reserved

F. Anti-Discrimination - The KDHE SRF Program requires the following clause be contained in the "Information to Bidders" for this project:

"Bidders on this work, including sub-contractors or vendors, will be required to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et. seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et. seq.)".

The enclosed "Contract Provisions of Kansas Statute Annotated (K.S.A.) 44-1030 Kansas Act Against Discrimination" information sheet (Appendix G-1) and the "State of Kansas Act Against Discrimination Contract Revisions" certification form (Appendix G-2) must be included in the contract documents. The subject form (Appendix G-2) must be executed, a copy retained for your files and a copy submitted to KDHE prior to approval for contract award. This should be included as part of the contractor's bid submittal.

G. Reserved

H. Reserved

I. Minority/Women's (Disadvantaged) Business Enterprise - MBE/WBE (DBE) - The Federal SRF program requires the following documents be included in the specifications: the KPWSLF Disadvantaged Business Enterprise Information Sheet (Appendix E-1), Section 31.36(e) of the March 11, 1988 EPA Procurement Regulations (Appendix E-2), Procedures for Implementing of MBE/WBE (Appendix E-3), and Minority and Women's Disadvantaged Business Enterprise Utilization Worksheet (Appendix E-4). All bidders must be required to submit a completed worksheet as part of their proposals.

J. Reserved

K. Bid Bond - KDHE recommends if the contract price is expected to exceed \$100,000, each bidder

furnish a bid guarantee equivalent to 5 per cent of the bid. Contracts less than \$100,000 are subject to State and local requirements relating to bid guarantee.

L. Award of Contract - KDHE Policy requires the proposal fully explain the basis for determining the low bidder and include a statement that the contract will be awarded to the lowest responsive, responsible bidder.

M. Reserved

N. Completion Time - KDHE Policy suggests the specifications contain a provision for the maximum calendar or work days allowed for completion of the project.

O. Right of Entry - The Federal SRF program requires that right of entry to the project site be provided for representatives of the Kansas Department of Health and Environment, so they may have access to the work wherever it is in preparation or progress. A paragraph approximately as follows must be included in the specifications:

The successful bidder shall secure the right of entry to the project site for representatives of the Kansas Department of Health and Environment, so they may have access to the work whenever it is in preparation or progress and also to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examinations, excerpts and transcriptions. Proper facilities and safe conditions must be provided for access and inspections, including advice regarding site safety procedures and programs to allow compliance.

P.Q. One Hundred Percent Performance and Payment Bonds - KDHE Policy suggests separate performance and payment bonds, each in the amount of 100 percent of the contract price, be required on construction contracts of \$100,000 or more. Use of the loan recipient's own bonding policies and requirements may be utilized but are subject to review and approval by KDHE.

R. Historical and Archeological - The Federal SRF program requires that a paragraph approximately as follows be included in the specifications:

If during the course of construction evidence of deposits of historical or archeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner who shall notify the Kansas Department of Health and Environment and the Executive Director, Kansas State Historical Society, 6425 SW 6th Street, Topeka, Kansas 66615. No further disturbance of the deposits shall ensue until the contractor has been notified by the owner that he may proceed. The owner will issue a notice to proceed only after the State official has surveyed the find and made a determination to Kansas Department of Health and Environment and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with

changed conditions or change order provisions of the specifications.

S. Reserved

T. Reserved

U. Reserved

V. Reserved

W. Reserved

X. Innovative/Alternative Performance - The specifications must clearly identify the performance required of the innovative/alternative portions of the project.

Y. Innovative/Alternative Bid Proposal - The bid proposal must include separate bid items for the innovative/alternative portions of the project.

Z. Payment Provisions - The KDHE SRF program demands prompt progress payments be made by the Recipient to contractors. Adequate provisions for such payments must be included in the specifications. Delays in payment to contractors for SRF-funded portions of the project may result in monetary penalty to the Recipient due to the "Rebate" requirements of Federal tax law.

AA. Reserved

BB. Reserved

CC. Reserved

DD. Reserved

EE. If Arbitration is included in the specifications, KDHE recommends disputes proceed to binding arbitration only by Mutual Consent.

FF. Reserved

GG. Reserved

HH. State and Local Laws, Ordinances, and Restrictions - The contract documents and specifications must be in compliance with all State and Local laws, ordinances, and restrictions.

II. NPDES General Permit Coverage for Discharges of Stormwater Runoff from Construction Activities - The owner or successful bidder must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for most any project which disturbs one acre or more of soils. A Notice of Intent form (NOI) must be submitted to KDHE 60 days before the start of construction and a permit determination from KDHE must be made before construction can begin. The Kansas construction stormwater general permit, a Notice of Intent (application form), a frequently asked questions file, and supplemental materials are available on-line on the KDHE Stormwater Web Page at www.kdhe.state.ks.us/stormwater.

SPECIFICATION REVIEW GUIDANCE CHECKLIST
POST EQUIVALENT KPWSLF PROJECTS

Project Name _____

Project No. _____

Reviewer _____

Date _____

_____ (A) Advertising Time (Policy)

Special Forms or Attachments

_____ (F) Anti-Discrimination clause (K.S.A. 44-1001 et. seq., K.S.A. 44-1111 et. seq.)

_____ (I) Minority/Women (Disadvantaged) Business Enterprise (EPA Regulation 31.36)

Other Required Items

_____ (K) 5% Bid Bond (Recommended)

_____ (L) Award of contract (Policy)

_____ (N) Definite completion time (Policy)

_____ (O) Right of Entry - EPA and KDHE (EPA Guidance)

_____ (P) 100% Performance Bond (Recommended)

_____ (Q) 100% Payment Bond (Recommended)

_____ (R) Historical and Archaeological [30.600(a)] (EPA Guidance)

_____ (X) Innovative/Alternative Performance (I/A/ projects only, EPA Guidance)

_____ (Y) Innovative/Alternative Bid Proposal (I/A/ projects only, EPA Guidance)

_____ (Z) Payment Provisions (Recommended)

_____ (EE) If Arbitration is included in the specifications, KDHE recommends disputes proceed to binding arbitration only by Mutual Consent. (Recommended)

_____ (HH) State and Local Laws, Ordinances, and Restrictions.

KANSAS PUBLIC WATER SUPPLY LOAN FUND PROJECTS
SPECIFICATION REVIEW GUIDANCE CHECKLIST
FOR EQUIPMENT CONTRACTS OF \$200,000 OR MORE
Post equivalent

Project Name _____
Project No. _____
Reviewer _____
Date _____

- _____ (A) Advertising Time (Policy)
- _____ (F) Anti-Discrimination Provisions and Certification Form (K.S.A. 44-1001 et. seq.,
and K.S.A. 44-1111 et. seq.)
- _____ (L) Award of contract (Policy)
- _____ (N) Definite delivery time (Policy)
- _____ (Z) Payment Provisions (Recommended)
- _____ (HH) State and Local Laws, Ordinances, and Restrictions

CONTRACT PROVISIONS OF KANSAS STATE ANNOTATED
(K.S.A.) 44-1030
KANSAS ACT AGAINST DISCRIMINATION

Except as provided by subsection (c) of this section, every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

1. The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency; and
5. The contractor shall include the provisions of paragraphs (1) through (4) inclusively of this subsection (a) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Commission on Civil Rights shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the governmental entity letting such contract cumulatively total five thousand dollars (\$5,000) or less during the fiscal year of such governmental entity. (K.S.A. 44-1030; L. 1977, ch. 183, 1; July 1)

STATE OF KANSAS
ACT AGAINST DISCRIMINATION
CONTRACT PROVISIONS

During the performance of this contract, the contractor agrees as follows:

1. The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency; and
5. The contractor shall include the provisions of paragraphs (1) through (4) inclusively of this subsection (a) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Commission on Civil Rights shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the governmental entity letting such contract cumulatively total five thousand dollars (\$5,000) or less during the fiscal year of such governmental entity. (K.S.A. 44-1030; L. 1977, ch. 183, 1; July 1)

PROJECT/CONTRACT NAME AND NO.

MUNICIPALITY _____

CONTRACTOR'S
SIGNATURE _____

TITLE _____

KPWSLF NO. _____

DATE _____

CERTIFICATE AS TO TITLE TO PROJECT SITE

Project No. _____

I _____, Attorney at Law
representing the _____, as title counsel,
do hereby certify:

1. That I have investigated and ascertained the location of, and am familiar with the legal description of the site or sites being provided by the Applicant for all elements (including intakes, pumping facilities, distribution lines, storage facilities, treatment plants, and appurtenances) of Project No. _____, to be constructed and maintained in and upon such site or sites.

2. That, if not previously submitted, I am attaching a legal description to the site or sites on which the treatment facility is to be constructed. (Descriptions of rights of way and easements for water lines are not required, but such rights of way and easements are covered by this title opinion.)

3. That I have examined the deed records of the county or counties in which such project is to be located and, in my opinion, the applicant has a legal and valid fee simple title to the site of the project, including necessary easements and rights of way; or such other interest, less than fee simple and fully described below, including terms as to duration or termination, sufficient to assure undisturbed use and possession for the purpose of construction and operation of the project; and in the case of projects serving more than one municipality, that the participating communities have such interest or rights sufficient to assure their undisturbed utilization or the project.

4. That if initiation of negotiations for acquisition of site and/or easements occurred after April 1, 1989, said acquisition was conducted in compliance with 40 CFR Part 4 dated March 2, 1989; including that:

(Place a check mark on the line beside as many of the following statements as are appropriate. At least one statement must be checked; it is possible that all three statements could be applicable. You must be able to certify A. if the statements in B. and/or C. do not apply to all acquisitions for the project.)

_____ A. Property was appraised by a qualified appraiser in accordance with nationally recognized appraisal standards; review appraisal was conducted, also by a qualified individual; and both were performed prior to initiation of negotiations;

_____ B. Certain parcels and /or easements were donated; and the donor, after being fully informed of their rights under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, waived their right to appraisal; and said

waivers are on file with the municipality;

_____ C. Certain parcels and/or easements were, based on a review of available data, determined to have a fair market value of \$2,500 or less; and therefore no appraisals were conducted for those properties.

5. That any deeds or documents required to be recorded in order to protect the title of the owner and the interest of the applicant have been duly recorded wherever necessary.

6. Remarks:

Dated this _____ day of _____, _____

Attorney at Law

Address

City and State

APPLICANT ASSURANCE WITH RESPECT TO ACQUISITION
OF REAL PROPERTY INCLUDING EASEMENTS

FOR KANSAS PUBLIC WATER SUPPLY
LOAN FUND PROJECTS

Please check the appropriate space(s) and provide any appropriate explanation.

I hereby certify that with reference to KPWSLF Project Number _____:

_____ All necessary real property has been acquired and Certificate as to Title to
Project Site is attached.

_____ Bonafide options have been taken on all necessary real property.

_____ Formal condemnation proceedings have been initiated for necessary real
property.

Authorized Representative of Applicant

Date

Legal Name of Applicant

KPWSLF PROJECT NO.:

Date:

Subject: Bid Documents for Review and Approval POST EQUIVALENCY

From:

To: Public Water Supply Section, Bureau of Water, KDHE

The following documents are enclosed for review and approval prior to awarding of the contract(s):

_____ Proof of advertising ¹

_____ Tabulation of bids

_____ Low bid and/or proposal recipient wishes to accept

_____ Recipient recommendation of award

_____ Any addenda not previously submitted and bidder acknowledgment of all addenda

_____ Bid bond ¹

_____ Minority and Women's Business Enterprise Utilization Worksheet(s), for bid(s) recipient wishes to accept ^{1,2}

_____ Recipient's assurance that proposed contractor(s) positive efforts and/or MBE/WBE (DBE) utilization have been reviewed, are satisfactory and meet regulatory requirements

_____ State of Kansas Act Against Discrimination Contract Provisions signature form

_____ One set of as-bid plans and specifications, if not previously submitted

_____ Site certification and description, if not previously submitted ^{1,2}

The proposal(s) expire _____.

Date

For additional information contact:

Name:

Address:

Phone No.

Signature of Authorized Representative

¹ Not applicable for small purchases

² Not applicable for equipment purchases